

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6673 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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Versus

SECRETARY TO GOVERNMENT

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Appearance:

MR BP TANNA for Petitioner

MR SK PATEL for RespondentS

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 06/09/1999

ORAL JUDGEMENT

#. It is unfortunate that though Mr.Patel is present in the court but he is not having the papers of the case. Not only this, even instructions are not being given to him in this case by the respondents. On behalf of respondent Nos. 1 and 2, he has made an attempt to make submissions but unable to give the reply to the substantial arguments raised by the learned counsel for

the petitioner.

#. In the Special Civil Application, the petitioner prayed for declaration that he is senior to his immediate junior Shri D.D. Desai and further is entitled to his due place in the Class II and Class I officer's seniority list and that he is further entitled to the benefit of deemed date of promotion and all consequential benefits.

#. During the pendency of this Special Civil Application, the petitioner has been given deemed date of promotion on notional basis w.e.f. on 20/10/77. But the petitioner is not satisfied with this deemed date of his promotion as he prayed for deemed date from 18/10/1966.

#. The learned counsel for the petitioner contends that the petitioner is senior to the persons detailed at page No.11 para No.9 of the Special Civil Application as all of them have been appointed on regular basis as a result of one and same selection made by the Gujarat Public Service Commission and he stands at higher number in merit list prepared than those persons. It has next been contended that the seniority to the officers who were appointed as a result of one and common selection by the Gujarat Public Service Commission is to be assigned to them in the order of their merit number. In support of this contention he placed reliance on the decision of the apex court in the case of G.P.Doval and Ors. V. Chief Secretary, Govt. of U.P. and Ors. AIR 1984 SC 1527.

#. Learned counsel or the respondent is unable to give out the material and effective assistance in this case to the court. He does have papers of the matter and that way he is totally handicapped to provide any effective assistance to this court in this case.

#. Be that as it may be. The petitioner and the respondents have not given out in their pleadings specific and detailed facts. The learned counsel for the petitioner though contended that the petitioner was placed at higher number in the merit list prepared by the Gujarat Public Service Commission for Class II services than those persons mentioned in para No.9 at page No.11 of the Special Civil Application but necessary factual details are not given. The petitioner claims the seniority on the basis of the length of his services in Class-II but his earlier services were only adhoc. But it is his case that services of the other officers in Class II prior to their regular selection by Gujarat Public Service Commission cannot be counted for

seniority. On the same analogy and principle this contention of the petitioner cannot be accepted.

#. From the reply to the Special Civil Application, I find that the petitioner's claim that his name was at Sr. No.7 in the merit list prepared by Gujarat Public Service Commission for Class II services is not disputed/denied. I also find therefrom that Shri Desai was promoted to Class II in the year 1964. However, during the course of arguments the learned counsel for the petitioner gives up claim of the petitioner of seniority above Shri Desai. In the reply to the Special Civil Application averments are made that some of the persons, against whom the grievances have made by the petitioner, were above him in the merit list prepared by Gujarat Public Service Commission, but very conveniently it was not given out by the respondents who are those persons. It is understandable that if all the persons except Mr. Desai mentioned in para No.9 at page 11 of the Special Civil Application are above the petitioner in the merit list, then the petitioner may not have any case but as per the respondents' their own case only some of them are above the petitioner in the merit list. The learned counsel for the petitioner correctly contended that at least the petitioner is to be given seniority above those persons, who are lower in merits than him in the merit list prepared by the Gujarat Public Service Commission for Class II services. In view of these pleadings of the respondent Nos. 1 & 2 this Special Civil Application deserves to be allowed and accordingly the same is allowed. The respondent No.1 is directed to fix the seniority of the petitioner in Class II services on the basis of his merit number in the merit list prepared for the class II services by Gujarat Public Service Commission and those persons, who are lower in merit than him in the list aforesaid, be shown junior to him. The petitioner has already retired from the services, his case may be considered for promotion from the date from which his immediate junior was given promotion and if he is found suitable for the promotion then deemed date of promotion be given to the petitioner on notional basis. This exercise has to be undertaken and completed within a period of 6 months from the date of the receipt of the writ of this order. Where the claim of the petitioner is not acceptable then a reasoned order may be passed and the copy of the same be sent to him by Registered Post A.D.

In case of difficulty liberty is granted to the petitioner for revival of this Special Civil Application. The petitioner is unnecessarily dragged in the litigation

by the respondents and it is a fit case where the respondent No.1 has to compensate the petitioner for the expenses incurred by him in filing of this Special Civil Application. The respondent No.1 is directed to pay Rs.3,000/- as what Shri Tanna states that he has charged this much of amount from the petitioner towards his professional fees to the petitioner.

The rule is made absolute in the aforesaid term.

(S.K.Keshote, J.)

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